

**Fiscal Year 2004 Statutory Audit of  
Compliance With Legal Guidelines  
Prohibiting the Use of Illegal Tax  
Protester and Similar Designations**

**June 2004**

**Reference Number: 2004-40-109**

**This report has cleared the Treasury Inspector General For Tax Administration disclosure review process and information determined to be restricted from public release has been redacted from this document.**



DEPARTMENT OF THE TREASURY  
WASHINGTON, D.C. 20220

INSPECTOR GENERAL  
for TAX  
ADMINISTRATION

June 7, 2004

MEMORANDUM FOR DEPUTY COMMISSIONER FOR SERVICES AND  
ENFORCEMENT  
DEPUTY COMMISSIONER FOR OPERATIONS SUPPORT

*Gordon C. Milbourn III*

FROM: Gordon C. Milbourn III  
Acting Deputy Inspector General for Audit

SUBJECT: Final Audit Report - Fiscal Year 2004 Statutory Audit of  
Compliance With Legal Guidelines Prohibiting the Use of Illegal  
Tax Protester and Similar Designations (Audit # 200340053)

This report presents the results of our review to determine if the Internal Revenue Service (IRS) complied with the IRS Restructuring and Reform Act of 1998 (RRA 98)<sup>1</sup> Section (§) 3707 and internal IRS guidelines that prohibit IRS officers and employees from referring to taxpayers as Illegal Tax Protesters (ITP) or any similar designations.

Prior to enactment of the RRA 98, taxpayers were referred to the ITP Program when their tax returns or correspondence contained specific indicators of noncompliance with the tax law, such as the use of arguments that had been repeatedly rejected by the courts. Once a taxpayer's account was coded as an ITP, certain tax enforcement actions were accelerated. The designation was also intended to alert IRS employees to be cautious so they would not be drawn into confrontations.

RRA 98 § 3707 prohibits the IRS from referring to taxpayers as ITPs or any similar designations. The Treasury Inspector General for Tax Administration is required to annually evaluate the IRS' compliance with the prohibition on the use of ITP or any similar designations.<sup>2</sup>

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<sup>1</sup> Pub. L. No. 105-206, 112 Stat. 685 (codified as amended in scattered sections of 2 U.S.C., 5 U.S.C. app., 16 U.S.C., 19 U.S.C., 22 U.S.C., 23 U.S.C., 26 U.S.C., 31 U.S.C., 38 U.S.C., and 49 U.S.C.).

<sup>2</sup> Internal Revenue Code § 7803(d)(1)(A)(v)(2000).

The IRS has not reintroduced past ITP codes on the Master File,<sup>3</sup> and formerly coded ITP taxpayer accounts have not been assigned similar ITP designations. However, a few taxpayers' records were coded as tax protesters on the Taxpayer Information File (TIF)<sup>4</sup> and the Integrated Collection System (ICS)<sup>5</sup> computer systems. In addition, the IRS does not have any current publications with ITP references. While the IRS has made some effort to remove ITP references from the various forms of the Internal Revenue Manual (IRM), it did not ensure that all corrections were completed. As a result, 103 ITP references still existed as of January 2004. In addition, three ITP references were identified in the Job Aids.<sup>6</sup>

In addition, in isolated instances IRS employees continued to make references to taxpayers as ITPs and other similar designations in case narratives. The IRS has taken steps in directing its employees to prevent ITP and similar designations from appearing in case narratives. However, in its response to our Fiscal Year 2003 report,<sup>7</sup> the IRS disagreed with our determination that to comply with this provision, IRS employees should not designate taxpayers as ITPs or similar designations in case histories. As a result, we elevated this disagreement to the Assistant Secretary for Management and Chief Financial Officer of the Treasury, but have not yet received a response.

We recommended that the Chief Information Officer take the appropriate steps to remove the tax protester coding from the TIF and the ICS and strengthen controls to prevent these computer systems from accepting such coding. We also recommended that the Commissioners, Small Business/Self-Employed (SB/SE) Division and Tax Exempt and Government Entities (TE/GE) Division; the Chief, Agency-Wide Shared Services; and the Chief Counsel take the necessary actions to ensure that the remaining ITP references are promptly removed from all versions of the IRM and the Job Aids. Since the IRS has taken interim action to deter employees from using ITP or similar designations in case narratives and there is an outstanding question concerning the legal interpretation of the RRA 98 § 3707, we believe that no further recommendations are needed at this time.

Management's Response: IRS management agreed with our recommendations. The IRS will remove the instances of tax protester coding that currently reside on the TIF and the ICS, and add new validation to prevent any additional entries. In addition, both the SB/SE and TE/GE Divisions and the Chief, Agency-Wide Shared Services, have taken actions to remove ITP references from all versions of the IRM and IRS Job Aids. Chief Counsel has revised their Chief Counsel Directives Manual to remove all ITP

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<sup>3</sup> The Master File is the IRS' database that stores various types of taxpayer account information. This database includes individual, business, and employee plans and exempt organizations data.

<sup>4</sup> The TIF provides tax account information for taxpayers selected for the Integrated Data Retrieval System.

<sup>5</sup> The ICS is a system used by Collection function employees to report taxpayer case time and activity.

<sup>6</sup> The Job Aids are the IRS approved information for nationwide use to guide and assist employees to perform their job. This is a new area not reviewed during our prior ITP audits.

<sup>7</sup> *Fiscal Year 2003 Statutory Audit of Compliance With Legal Guidelines Prohibiting the Use of Illegal Tax Protester and Similar Designations* (Reference Number 2003-40-098, dated April 2003).

references; however, revisions are in the clearance process. Management's complete response to the draft report is included as Appendix VII.

Copies of this report are also being sent to the IRS managers affected by the report recommendations. Please contact me at (202) 622-6510 if you have questions or Michael R. Phillips, Assistant Inspector General for Audit (Wage and Investment Income Programs), at (202) 927-0597.

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### **Background**

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The Internal Revenue Service (IRS) Restructuring and Reform Act of 1998 (RRA 98)<sup>1</sup> Section (§) 3707 prohibits the IRS from referring to taxpayers as Illegal Tax Protesters (ITP) or any similar designations. In addition, the RRA 98 requires the removal of all existing ITP codes from the IRS' Master File<sup>2</sup> and instructs IRS employees to disregard any such designation not located on the Individual Master File (IMF).<sup>3</sup>

Prior to enactment of the RRA 98, taxpayers were referred to the ITP Program when their tax returns or correspondence contained specific indicators of noncompliance with the tax law, such as the use of arguments that had been repeatedly rejected by the courts. Once a taxpayer's account was coded as an ITP, certain tax enforcement actions were accelerated. The designation was also intended to alert IRS employees to be cautious so they would not be drawn into confrontations.

The Congress had concerns that some taxpayers were being permanently labeled and stigmatized by the ITP designation. Taxpayers who subsequently complied with the tax laws could continue to be labeled as ITPs, which could bias IRS employees and result in unfair treatment.

Internal Revenue Code § 7803(d)(1)(A)(v)(2000) requires the Treasury Inspector General for Tax Administration to annually evaluate the IRS' compliance with the prohibition against using ITP or any similar designations. This is our sixth review since Fiscal Year (FY) 1999. These reviews have identified areas for improvement to help the IRS comply with the ITP designation prohibition.

This review was performed in the IRS National Headquarters in Washington, D.C., during the period August 2003 through March 2004. The audit was conducted in accordance with *Government Auditing*

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<sup>1</sup> Pub. L. No. 105-206, 112 Stat. 685 (codified as amended in scattered sections of 2 U.S.C., 5 U.S.C. app., 16 U.S.C., 19 U.S.C., 22 U.S.C., 23 U.S.C., 26 U.S.C., 31 U.S.C., 38 U.S.C., and 49 U.S.C.).

<sup>2</sup> The Master File is the IRS' database that stores various types of taxpayer account information. This database includes individual, business, and employee plans and exempt organizations data.

<sup>3</sup> The IMF is the IRS database that maintains transactions or records of individual tax accounts.

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### **Illegal Tax Protester Codes Were Not Used on the Master File but Were Identified on Other Computer Systems**

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*Standards.* Detailed information on our audit objective, scope, and methodology is presented in Appendix I. Major contributors to the report are listed in Appendix II.

In prior reviews, we reported that the IRS had removed the ITP codes from the Master File as required by the RRA 98 § 3707. The ITP designation has not been reintroduced on the Master File.

The RRA 98 § 3707 also prohibits using any designation similar to the ITP. A review of the approximately 57,000 taxpayer accounts formerly coded as ITPs on the Master File identified no reassignments of these taxpayer accounts to any other Master File designations.

In addition to the Master File, the IRS uses other computer inventory systems to manage taxpayer cases. This year we reviewed approximately 24.7 million taxpayer accounts on the Taxpayer Information File (TIF),<sup>4</sup> identifying 47 taxpayer records that contained codes designating them as tax protesters. Additionally, a review of approximately 1.5 million Integrated Collection System (ICS)<sup>5</sup> taxpayer accounts disclosed another 26 taxpayers accounts that were coded as tax protesters.

IRS officials informed us that these tax protester codes had been input during the last 18 months but could not determine why the codes had been input. In addition, these codes were not visible to employees researching ICS. Although the RRA 98 did not specifically require the removal of tax protester codes on these computer systems, the use of such coding, based on the language of the statute, would appear to be contrary to the intent of the Congress.

### **Recommendation**

1. The Chief Information Officer should take the appropriate steps to remove the tax protester coding

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<sup>4</sup> The TIF provides tax account information for taxpayers selected for the Integrated Data Retrieval System (the IRS computer system capable of retrieving or updating stored information; it works in conjunction with a taxpayer's account records).

<sup>5</sup> The ICS is a system used by Collection function employees to report taxpayer case time and activity.

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from the TIF and the ICS, and strengthen controls to prevent these computer systems from accepting such coding.

Management's Response: IRS management will remove the instances of tax protester coding that currently reside on the TIF and the ICS and add new validation to prevent any additional entries.

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### **Internal Revenue Service Publications Do Not Contain Illegal Tax Protester References**

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To help promote compliance with the RRA 98 § 3707, IRS management issued directives for employees to update various publications to eliminate references to ITP terminology and programs. A review of IRS publications identified no ITP references. The IRS has labeled those publications with ITP references identified in our previous reviews as obsolete.

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### **The Internal Revenue Manual and Job Aids Contained Illegal Tax Protester References**

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During each of the five prior reviews, we identified multiple subsections throughout the various forms of the Internal Revenue Manual (IRM)<sup>6</sup> that contained ITP references. In August 2002, the IRS responded to our FY 2002 report stating that each IRS function responsible for manual updates would delete these references from the IRM. There were a total of 144 of these references<sup>7</sup> throughout the various forms of the IRM as of March 2002. Although according to the IRS, this corrective action was completed in April 2003, many of these references still exist.

While the IRS has made some effort to remove ITP references from the various forms of the IRM, it did not ensure that all corrections were completed. As a result, 103 ITP references still existed as of January 2004, with the majority of them found in the Chief Counsel's portions of the IRM. In addition, we identified 3 ITP references in the IRS Job Aids.<sup>8</sup> The existence of ITP references in the IRM

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<sup>6</sup> The IRM is found in various locations on the IRS Intranet, such as IRM online, the Servicewide Electronic Research Program, and the IRS Publishing web site. It is also found on the IRS public web site, as well as on paper and CD-ROM.

<sup>7</sup> This is a cumulative total of the number of ITP references found throughout the various forms of the IRM. It is not a unique count of the actual individual references.

<sup>8</sup> The Job Aids are the IRS approved information for nationwide use to guide and assist employees in performing their jobs. This is a new area not reviewed during our prior ITP audits.



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and the Job Aids may encourage IRS employees to improperly label taxpayers.

The following chart compares the number of unique ITP references in the IRM and the Job Aids identified during our FY 2004 review.

**Comparison of Unique Illegal Tax Protester References in the IRM  
and Job Aids by IRS Function**

<b>IRS Function</b>	<b>Unique Count of ITP References in the IRM and Job Aids</b>
<b>Chief Counsel</b>	19
<b>Small Business/ Self-Employed Division</b>	3
<b>Tax Exempt and Government Entities Division</b>	1
<b>Agency-Wide Shared Services</b>	1

*Source: Current versions of the IRM and Job Aids.*

In responding to our FY 2002 report,<sup>9</sup> the IRS stated that the IRS functions were to delete these references from their portions of the IRM. In addition, the Office of Servicewide Policy, Directives, and Electronic Research was to continue to manage the Internal Management Documents process by coordinating requests from the Multimedia Publishing Division to search the various IRM files for ITP references. We did not find any evidence that these searches were conducted.

### **Recommendation**

2. The Commissioners, Small Business/Self-Employed (SB/SE) Division and Tax Exempt and Government Entities (TE/GE) Division; the Chief, Agency-Wide

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<sup>9</sup> *Efforts Are Still Needed to Discourage the Use of Illegal Tax Protester and Similar Designations* (Reference Number 2002-40-162, dated September 2002).

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Shared Services; and the Chief Counsel should take the necessary actions to ensure that the remaining ITP references are promptly removed from all versions of the IRM and IRS Job Aids.

Management's Response: The SB/SE and TE/GE Divisions and the Chief, Agency-Wide Shared Services, have taken actions to remove ITP references from all versions of the IRM and IRS Job Aids. Chief Counsel has revised their Chief Counsel Directives Manual to remove all ITP references; however, revisions are in the clearance process.

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### **Employees Used Illegal Tax Protester or Similar Designations in Isolated Instances in Case Narratives**

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Our FY 2004 review of a sample of computer systems and paper files used by IRS employees to document case activity identified 233 isolated instances where 206 employees designated taxpayers as "tax protesters," "ITPs," "constitutionally challenged," or other similar designations. These actions are prohibited by the RRA 98 § 3707.

Employees are allowed to document any statements made by a taxpayer or their representatives. Quoting a taxpayer's self-designation as an ITP is not prohibited by the RRA 98 § 3707. However, examples of inappropriate IRS employee comments can be found in Appendix VI, and a breakdown of where comments were made can be found in Appendix V.

The IRS has taken steps in directing its employees to prevent ITP and similar designations from appearing in case narratives. On October 11, 2002, the IRS issued a Servicewide Electronic Research Program (SERP)<sup>10</sup> alert<sup>11</sup> reminding employees of the prohibition regarding the use of ITP or any similar designations. Business and functional units independently continue to take additional steps to address this issue. These included sending out additional guidance in the form of SERP alerts, e-mail alerts and memorandums, updating training, conducting quality reviews for ITP usage, and counseling employees that

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<sup>10</sup> The SERP is an electronic researching tool containing many former paper research applications (e.g., Publications, IRM, Probe and Response Guide, etc.).

<sup>11</sup> Only those employees that use the SERP would have access to this alert.

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continued to designate taxpayers as ITPs or other similar designations.

However, in its response to our FY 2003 report, the IRS disagreed with our determination that in order to comply with this provision, IRS employees should not designate taxpayers as ITPs or similar designations in case narratives. As a result, we elevated this disagreement to the Assistant Secretary for Management and Chief Financial Officer of the Treasury, but have not yet received a response.

We believe that it is reasonable to conclude, based upon the language of the statute, that IRS officers and employees should not label taxpayers as ITPs or similar designations in any IRS records, which includes paper and electronic case files. We agree with the IRS that merely making references to taxpayers' actions (e.g., indicating the type of document the taxpayer files or that the taxpayer files letters containing typical protester language) does not constitute a designation prohibited by this statutory provision. IRS officers and employees should not, however, designate taxpayers as ITPs or similar designations because such a designation alone contains a negative connotation and appears to label the taxpayer.

In isolated instances, employees referred to taxpayers using ITP designations in case narratives on the following IRS computer inventory management systems and paper case files:

- Automated Collection System (ACS):<sup>12</sup> A review of approximately 2.5 million open ACS records identified 44 cases in which 41 employees used ITP or similar designations when referring to specific taxpayers in their case narratives.
- Criminal Investigation Management Information System (CIMIS):<sup>13</sup> A review of 9,353 open cases identified 5 cases in which 5 employees used ITP or

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<sup>12</sup> The ACS is a computerized system that maintains balance due accounts and return delinquency investigations.

<sup>13</sup> The CIMIS is a computer database used to inventory, control, and track the progress of criminal investigations.

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similar designations when referring to specific taxpayers in their case narratives.

- Examination Function Paper Case Files:<sup>14</sup> A review of a judgmental sample of 557 taxpayers identified 3 cases in which 3 employees used ITP or similar designations when referring to specific taxpayers in their paper case files.
- Integrated Collection System: A review of approximately 1 million open ICS records identified 177 cases in which 153 employees used ITP or similar designations when referring to specific taxpayers in their case narratives.
- Taxpayer Advocate Management Information System (TAMIS):<sup>15</sup> A review of 33,718 open TAMIS records identified 4 cases in which 4 employees used ITP or similar designations when referring to specific taxpayers in their case narratives.

We identified 90 additional instances in various case narratives where employees had used the term tax protester or similar references. In general, employees had used these terms to describe the type of action taken by the taxpayer and had not specifically designated taxpayers as “protesters.” While these actions are not prohibited by the RRA 98 § 3707, we are concerned that these references could become, or be considered, permanent labels that could subsequently stigmatize taxpayers in future contacts with the IRS.

Since the IRS has taken interim action to address these issues and there is an outstanding question concerning the legal interpretation of the RRA 98 § 3707, we believe that no further recommendations are needed at this time.

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<sup>14</sup> The judgmental sample included examination cases from only the SB/SE and Wage and Investment Divisions.

<sup>15</sup> The TAMIS is an electronic database and case inventory control system used by Taxpayer Advocate Service employees.

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**Appendix I**

**Detailed Objective, Scope, and Methodology**

The objective of this review was to determine if the Internal Revenue Service (IRS) complied with the IRS Restructuring and Reform Act of 1998 (RRA 98)<sup>1</sup> Section (§) 3707 and internal IRS guidelines that prohibit referring to taxpayers as Illegal Tax Protesters (ITP) or any similar designations. The Treasury Inspector General for Tax Administration (TIGTA) is required to annually evaluate the IRS' compliance with the prohibition against using ITP or any similar designation.<sup>2</sup> To complete this objective, we:

- I. Determined if the ITP coding on the IRS' Master File<sup>3</sup> was removed by reviewing all Accelerated Issuance Codes (Transaction Code 148) as of November 2003 for Business Master File (BMF)<sup>4</sup> records and Individual Master File (IMF)<sup>5</sup> records. We reviewed 160,114 BMF records and 570,876 IMF records. We generally relied on the TIGTA's Office of Information Technology for validation of the data provided to us. However, we did a limited validation of the data by researching a judgmental sample of 25 Taxpayer Identification Numbers (TIN)<sup>6</sup> and 25 Employer Identification Numbers (EIN)<sup>7</sup> on the Integrated Data Retrieval System (IDRS).<sup>8</sup>

We also compared our historic computer extract of approximately 57,000 taxpayers designated as ITPs before the RRA 98 was enacted to our BMF and IMF records with an Accelerated Issuance Code (Transaction Code 148) to determine if any new common codes were being used to classify them as ITPs.

- II. Determined if the IRS' Internal Revenue Manual (IRM) and Job Aids<sup>9</sup> contained ITP or any similar designations by performing key word searches in January 2004 of the Servicewide Policy, Directive, and Electronic Research system; the Servicewide

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<sup>1</sup> Pub. L. No. 105-206, 112 Stat. 685 (codified as amended in scattered sections of 2 U.S.C., 5 U.S.C. app., 16 U.S.C., 19 U.S.C., 22 U.S.C., 23 U.S.C., 26 U.S.C., 31 U.S.C., 38 U.S.C., and 49 U.S.C.).

<sup>2</sup> Internal Revenue Code § 7803(d)(1)(A)(v)(2000).

<sup>3</sup> The Master File is the IRS' database that stores various types of taxpayer account information. This database includes individual, business, and employee plans and exempt organizations data.

<sup>4</sup> The BMF is the IRS database that consists of Federal tax-related transactions and accounts for businesses. These include employment taxes, income taxes on businesses, and excise taxes.

<sup>5</sup> The IMF is the IRS database that maintains transactions or records of individual tax accounts.

<sup>6</sup> A nine-digit number assigned to taxpayers for identification purposes. Depending upon the nature of the taxpayer, the TIN is either an Employer Identification Number, a Social Security Number, or an Individual TIN.

<sup>7</sup> A unique nine-digit number used to identify a taxpayer's business account.

<sup>8</sup> The IDRS is the IRS computer system capable of retrieving or updating stored information; it works in conjunction with a taxpayer's account records.

<sup>9</sup> The Job Aids are the IRS approved information for nationwide use to guide and assist employees to perform their job. This is a new area not reviewed during our prior ITP audits.

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Electronic Research Program (SERP);<sup>10</sup> the IRS' electronic publishing Intranet web site; the IRS' public Internet web site; the CD-ROM; and paper IRMs. We specifically searched for corrections to the exceptions identified in our Fiscal Year 2003 report<sup>11</sup> and determined if there were any new references.

- III. Determined if IRS publications still contained ITP or any similar designations by performing key word searches of the SERP, the IRS' public Internet web site, and the IRS' electronic publishing Intranet web site in October 2003.
- IV. Determined if employees were using ITP or any similar designations within taxpayer case narratives on the IRS' Integrated Collection System (ICS)<sup>12</sup> by securing and analyzing 1,046,459 open ICS records as of September 2003 from a database with history action dates between October 2002 and September 2003. We did not perform a detailed validation of the ICS data because this information was provided directly from the IRS through the TIGTA Data Center Warehouse (DCW).<sup>13</sup> However, we did a limited validation of the data accuracy by matching a judgmental sample of 25 TINs to the IDRS to determine if the accounts were in current collection status.
- V. Determined if employees were using ITP or any similar designations within taxpayer case narratives on the IRS' Automated Collection System (ACS)<sup>14</sup> by securing and analyzing all 2,537,738 records from the current open database as of the end of September 2003. We did not perform a detailed validation of the ACS data because this information was provided directly from the IRS through the TIGTA DCW. However, we did a limited validation of the data accuracy by matching a judgmental sample of 25 TINs to the IDRS to ensure the accounts were in current collection status.
- VI. Determined if employees were using ITP or any similar designations within taxpayer case narratives on the IRS' Taxpayer Advocate Management Information System (TAMIS)<sup>15</sup> by analyzing the key word query results of 33,718 open TAMIS cases with activity between October 2002 and September 2003. The Taxpayer Advocate Service provided the data and validation information to us. The TIGTA DCW staff validated the TAMIS data received. In addition, we did a limited validation of data accuracy and completeness by looking up a judgmental sample of 25 cases by accessing TAMIS on-line.

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<sup>10</sup> The SERP is an electronic researching tool containing many former paper research applications (e.g., Publications, IRM, Probe and Response Guide, etc.).

<sup>11</sup> *Fiscal Year 2003 Statutory Audit of Compliance With Legal Guidelines Prohibiting the Use of Illegal Tax Protester and Similar Designations* (Reference Number 2003-40-098, dated April 2003).

<sup>12</sup> The ICS is a system used by Collection function employees to report taxpayer case time and activity.

<sup>13</sup> The DCW consists of data used by the TIGTA in audits, investigations, integrity projects, and administrative requirements.

<sup>14</sup> The ACS is a computerized system that maintains balance due accounts and return delinquency investigations.

<sup>15</sup> The TAMIS is an electronic database and case inventory control system used by Taxpayer Advocate Service employees.

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- VII. Determined if employees were using ITP or any similar designations within taxpayer case narratives on the IRS' Appeals Centralized Database System (ACDS)<sup>16</sup> by analyzing 105,615 case records identified as received in the Appeals function between October 2002 and September 2003. The data were provided directly from the IRS through the TIGTA DCW. However, we did a limited validation of data accuracy and completeness by looking up a judgmental sample of 36 case records by accessing ACDS on-line.
- VIII. Determined if Examination function employees were using ITP or any similar designations within paper case files by reviewing a judgmental sample of 557 taxpayers previously identified as ITPs. The sample was selected from 3,666 closed tax return examinations that were closed between October 2002 and June 2003. We validated record counts for this time period against Examination reports provided by the IRS.
- IX. Determined if Criminal Investigation (CI) function employees were using ITP or any similar designations within taxpayer allegation text by analyzing 9,353 cases opened on the Criminal Investigation Management Information System (CIMIS)<sup>17</sup> between October 2002 and August 2003. The data were provided directly from the IRS and validated by the TIGTA. Additionally, we did a limited validation of the data accuracy by matching a judgmental sample of 25 TINs to the IDRS to ensure the existence of criminal investigation activity.

We also compared the historic computer extract of approximately 57,000 taxpayers designated as ITP before the RRA 98 was enacted to the 5,152 cases that the CI function closed between October 2002 and August 2003. We determined that none of the previously designated ITP taxpayers are in the CI function's closed case files.

- X. Determined if the IMF and BMF taxpayers on the Taxpayer Information File (TIF)<sup>18</sup> are coded as ITP by querying the Taxpayer Delinquency Investigation (TDI) Case Code field for the tax protester code "TXPR." We reviewed 14,539,900 IMF and 10,123,467 BMF taxpayer accounts on the IDRS during the week of March 1, 2004. We generally relied on the TIGTA's Office of Information Technology for validation of the data provided to us. However, we did a limited validation of the data by researching a judgmental sample of 15 EINs and 10 TINs on the IDRS.

Determined if taxpayers on the ICS are coded as ITP by querying the TDI Case Code field for "TXPR." We reviewed 1,507,175 ICS taxpayer records as of February 2004. We did not perform a detailed validation of the ICS data because this information was provided directly from the IRS through the TIGTA DCW.

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<sup>16</sup> The ACDS is a computerized case control system used to control and track cases coming into and leaving Appeals.

<sup>17</sup> The CIMIS is a computer database used to inventory, control, and track the progress of criminal investigations.

<sup>18</sup> The TIF provides tax account information for taxpayers selected for the IDRS.

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We also compared our historic computer extract of approximately 57,000 taxpayers designated as ITPs before the RRA 98 was enacted to our records with a “TXPR” code to determine if any new common codes were being used to classify them as ITPs.

- XI. Consulted with the TIGTA’s Office of Chief Counsel on the correct application of the law.



**Major Contributors to This Report**

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**Appendix III**

**Report Distribution List**

Commissioner C  
Office of the Commissioner – Attn: Chief of Staff C  
Commissioner, Small Business/Self-Employed Division SE:S  
Commissioner, Tax Exempt and Government Entities Division SE:T  
Commissioner, Wage and Investment Division SE:W  
Director, Communications & Liaison, Small Business/Self-Employed Division SE:S:MS:CL  
Director, Compliance, Small Business/Self-Employed Division SE:S:C  
Director, Compliance, Wage and Investment Division SE:W:CP  
Director, Office of Research, Analysis, and Statistics RAS  
Director, Office of Servicewide Policy, Directives, and Electronic Research RAS:SPDER  
Director, Strategy and Finance, Wage and Investment Division SE:W:S  
Chief, Agency-Wide Shared Services OS:A  
Chief, Appeals AP  
Chief Counsel CC  
Chief, Criminal Investigation SE:CI  
Chief Information Officer OS:CIO  
National Taxpayer Advocate TA  
Director, Office of Legislative Affairs CL:LA  
Director, Office of Program Evaluation and Risk Analysis RAS:O  
Office of Management Controls OS:CFO:AR:M  
Audit Liaisons:  
    Chief, Customer Liaison, Small Business/Self-Employed Division SE:S:COM  
    Commissioner, Tax Exempt and Government Entities Division SE:T  
    GAO/TIGTA Liaison, Wage and Investment Division SE:W:S:PA  
    GAO/TIGTA Liaison, Modernization & Information Technology Services  
    OS:CIO:R:PM:PO

### **Outcome Measures**

This appendix presents detailed information on the measurable impact that our recommended corrective actions in this report and the recommended corrective actions from our Fiscal Year 2002 audit report<sup>1</sup> will continue to have on tax administration. These benefits will be incorporated into our Semiannual Report to the Congress.

Type and Value of Outcome Measure:

- Taxpayer Rights and Entitlements – Potential; 306 taxpayers affected (see pages 2 and 5).

Methodology Used to Measure the Reported Benefit:

We reviewed the following:

- From the Taxpayer Information File (TIF)<sup>2</sup> - approximately 24.7 million taxpayer accounts as of the week of March 1, 2004, and identified 47 taxpayer accounts coded as tax protesters.
- From the Automated Collection System (ACS)<sup>3</sup> - approximately 2.5 million records from the current open database as of the end of September 2003, and identified 44 taxpayer case narratives that contained Illegal Tax Protester (ITP) or a similar designation.
- From the Criminal Investigation Management Information System (CIMIS)<sup>4</sup> - a total of 9,353 cases opened between October 2002 and August 2003, and identified 5 taxpayer case narratives that contained ITP or a similar designation.
- From Examination function paper case files - a total of 557 judgmentally selected taxpayers with tax return examinations closed between October 2002 and June 2003, and identified 3 taxpayer case files that contained ITP or a similar designation.
- From the Integrated Collection System (ICS)<sup>5</sup> - approximately 1 million open records with history action dates between October 2002 and September 2003, and identified 177 taxpayer case narratives that contained ITP or a similar designation. Additionally, from approximately 1.5 million open and archive taxpayer accounts on the ICS at month end February 2004, we identified 26 taxpayer accounts coded as tax protesters.

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<sup>1</sup> *Efforts Are Still Needed to Discourage the Use of Illegal Tax Protester and Similar Designations* (Reference Number 2002-40-162, dated September 2002).

<sup>2</sup> The TIF provides tax account information for taxpayers selected for the Integrated Data Retrieval System.

<sup>3</sup> The ACS is a computerized system that maintains balance due accounts and return delinquency investigations.

<sup>4</sup> The CIMIS is a computer database used to inventory, control, and track the progress of criminal investigations.

<sup>5</sup> The ICS is a system used by Collection function employees to report taxpayer case time and activity.

## **Fiscal Year 2004 Statutory Audit of Compliance With Legal Guidelines Prohibiting the Use of Illegal Tax Protester and Similar Designations**

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- From the Taxpayer Advocate Management Information System (TAMIS)<sup>6</sup> - a total of 33,718 open cases with activity between October 2002 and September 2003, and identified 4 taxpayer case narratives that contained ITP or a similar designation.

### Type and Value of Outcome Measure:

- Reliability of Information – Actual; 103 Internal Revenue Manual (IRM) subsections from various sources affected and 3 Job Aids<sup>7</sup> (see page 3).

### Methodology Used to Measure the Reported Benefit:

In January 2004, we searched various versions of the IRM and the Job Aids available to Internal Revenue Service (IRS) employees for ITP references. These were found on the Servicewide Electronic Research Program (SERP);<sup>8</sup> the IRS' publishing web site; the IRS' public Internet web site; the CD-ROM; and on paper.

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<sup>6</sup> The TAMIS is an electronic database and case inventory control system used by Taxpayer Advocate Service employees.

<sup>7</sup> The Job Aids are the Internal Revenue Service approved information for nationwide use to guide and assist employees to perform their job. This is a new area not reviewed during our prior ITP audits.

<sup>8</sup> The SERP is an electronic researching tool containing many former paper research applications (e.g. Publications, IRM, Probe and Response Guide, etc.).

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Prohibiting the Use of Illegal Tax Protester and Similar Designations**

**Appendix V**

**Use of Illegal Tax Protester and Similar Designations in Case Narratives by  
Internal Revenue Service Employees During Fiscal Years 2002, 2003, and 2004<sup>1</sup>**

Exception Location	Fiscal Year 2002 Review			Fiscal Year 2003 Review			Fiscal Year 2004 Review		
	Employees	Protester Use	Similar Designation Use	Employees	Protester Use	Similar Designation Use	Employees	Protester Use	Similar Designation Use
Appeals Centralized Database System (ACDS) <sup>2</sup>	2	1	1	2	0	2	0	0	0
Automated Collection System (ACS) <sup>3</sup>	81	59	32	77	66	17	41	31	13
Criminal Investigation Management Information System (CIMIS) <sup>4</sup>	0	0	0	0	0	0	5	2	3
Examination Function Cases	2	1	1	4	3	1	3	1	2
Integrated Collection System (ICS) <sup>5</sup>	166	83	120	209	93	135	153	76	101
Taxpayer Advocate Management Information System (TAMIS) <sup>6</sup>	4	0	5	4	0	4	4	3	1
<b>TOTALS</b>	255	144	159	296	162	159	206	113	120

*Source: Treasury Inspector General for Tax Administration reports entitled "Efforts Are Still Needed to Discourage the Use of Illegal Tax Protester and Similar Designations" (Reference Number 2002-40-162, dated September 2002), and Fiscal Year 2003 Statutory Audit of Compliance With Legal Guidelines Prohibiting the Use of Illegal Tax Protester and Similar Designations (Reference Number 2003-40-098, dated April 2003), and various IRS case narratives.*

<sup>1</sup> Due to minor scope and methodology differences between our Fiscal Years 2002, 2003, and 2004 reviews, each number in this table should be viewed independently.

<sup>2</sup> The ACDS is a computerized case control system used to control and track cases coming into and leaving Appeals.

<sup>3</sup> The ACS is a computerized system that maintains balance due accounts and return delinquency investigations.

<sup>4</sup> The CIMIS is a computer database used to inventory, control, and track the progress of criminal investigations.

<sup>5</sup> The ICS is a system used by Collection function employees to report taxpayer case time and activity.

<sup>6</sup> The TAMIS is an electronic database and case inventory control system used by Taxpayer Advocate Service employees.

**Fiscal Year 2004 Statutory Audit of Compliance With Legal Guidelines  
Prohibiting the Use of Illegal Tax Protester and Similar Designations**

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**Appendix VI**

**Examples of Illegal Tax Protester and Similar Designations  
Found in Case Narratives**

During our Fiscal Year 2004 review, we searched for the following words and abbreviations to identify Illegal Tax Protester (ITP) and other similar designations being used by Internal Revenue Service (IRS) employees in their case narratives. We did not take exception to employee comments quoting a taxpayer's self-designation as an ITP.

• <b>CHALLENGE</b>	• <b>CHLLNG</b>	• <b>CNSTTTNL</b>	• <b>CONGRESSIONAL</b>
• <b>CONSTITUTIONAL</b>	• <b>ITP</b>	• <b>OBJECTOR</b>	• <b>PROTESTER</b>
• <b>PROTESTOR</b>	• <b>PROTESTR</b>	• <b>PROTSTR</b>	• <b>PRTSTR</b>

The following comments made by employees are some examples of ITP and similar designations found in IRS employees' case narratives.

- TP [taxpayer] TAX PROTESTER VERY ANGRY.
- TP [taxpayer] DISPUTING BD [balance due account] 30-9812 [tax year 1998], EXPLND [explained] TO TP [taxpayer] WHY [gender removed] OWED, TP [taxpayer] POSSIBLY TAX PROTESTOR.
- TP [taxpayer] CALLED BACK, SOUNDS LIKE A TAX PROTESTER, WANTS TO CITE SUPREME COURT CODES THAT [gender removed] DOES NOT HAVE TO REPORT INCOME.
- I FINALLY REALIZE I DID NOT HAVE TO CONTACT TP [taxpayer]. TP [taxpayer] IS A TAX PROTESTER.
- TP [taxpayer] IS SEMI PROTESTOR TYPE. NOT SURPRISED GIVEN [gender removed] CURRENT ACTIONS. WE DON'T KNOW WHERE [gender removed] BANKS, LIVES, SUPPORTS [gender removed].
- BASED ON THE CONSISTENT PATTERN OF DOCS [documents] INITIATED BY THE TP [taxpayer], A REASONABLE PRESUMPTION CAN BE MADE THAT TP [taxpayer] IS FIRMLY ENTRENCHED IN A PROTESTOR POSITION.

**Fiscal Year 2004 Statutory Audit of Compliance With Legal Guidelines  
Prohibiting the Use of Illegal Tax Protester and Similar Designations**

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- RO [revenue officer] THINKING OF CALL [sic] CID [Criminal Investigation Division] TO REPORT THIS TAXPAYER AND HAVE [gender removed] LABELED AS A TAX PROTESTOR (RO [revenue officer] CANNOT THINK OF CORRECT TERM).
- CONSTITUTIONALLY CHALLENGED [sic] TP [taxpayer].
- AWAIT ASSESSMENT TO HIT THE SYSTEM, THEN I WILL SEND L-1058 [Notice of Intent to Levy] AS TP [taxpayer] IS CONSTITUTIONALLY CHALLENGED AND AN APPOINTMENT IS FUTILE.
- TP [taxpayer] CONSTITUTIONALLY CHALLENGED. [gender removed] DID NOT PROVIDE VALID DISPUTE OF TAX LIABILITY. THEREFORE, PROCEED W/LEVY [with levy] ACTIONS.
- RO [revenue officer] FEELS THAT [gender removed] TP IS PROBABLY [sic] A "TAX CHALLENGED INDIVIDUAL." THE REASON BEING IS THAT [gender removed] IS NOT RESPONDING AND [gender removed] IF [gender removed] IS AWARE IS [sic] BEING VERY EVASSIVE [sic].
- TPS [taxpayers] APPEAR TO BE SHALL WE SAY TAX CHALLENGED INDIVIDUALS.
- TP [taxpayer] IS CONSTITUTIONALLY CHALLENGED AND REQUESTING CONFERENCE TO TRY TO SETTLE WOULD SERVE NO PURPOSE.
- I'M FAMILIAR WITH THESE TAXPAYERS; THEY'VE BEEN COMPLIANCE CHALLENGED FOR A VERY LONG TIME.
- T/P [taxpayer] IS CONSTITUTIONAL CHALLENGED (TAX PROTESTER), T/P [taxpayer] REQUEST DENIED, CASE CLOSED; NO ACTION TAKEN.
- THESE TAXPAYERS ARE TO BE CONSIDERED CONSTITUTIONALLY CHALLENGED AND SHOULD NOT BE INTERVIEWED OR APPROACHED BY ANY IRS EMPLOYEE ALONE.

Fiscal Year 2004 Statutory Audit of Compliance With Legal Guidelines  
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Appendix VII

Management's Response to the Draft Report



DEPARTMENT OF THE TREASURY  
INTERNAL REVENUE SERVICE  
WASHINGTON, D.C. 20224

RECEIVED  
MAY 28 2004

MAY 27 2004

MEMORANDUM FOR ACTING DEPUTY INSPECTOR GENERAL FOR AUDIT

FROM: Dale F. Hart *Dale F. Hart by MB*  
Commissioner, Small Business/Self-Employed Division

SUBJECT: Draft Audit Report – Fiscal Year 2004 Statutory Audit of  
Compliance with Legal Guidelines Prohibiting the Use of Illegal  
Tax Protester and Similar Designations (Audit # 200340053)

I reviewed your report and appreciate your recognition of the actions the IRS has taken to comply with Section (§) 3707 of the Internal Revenue Service Restructuring and Reform Act of 1998 (RRA '98). As you indicated in the report, we have not reintroduced past Illegal Tax Protester (ITP) codes on the Master File, and the 57,000 cases formerly coded as ITP have not been assigned a similar ITP designation. We have removed all ITP references from all current publications and the Internal Revenue Manual (IRM) for which we are responsible.

We believe we have taken significant actions to comply with this code section to ensure we protect the rights of all taxpayers, including those who do not agree with the constitutionality of our tax system. There are no designations in place on any taxpayer case that would cause employees to treat taxpayers who protest our tax system any differently from those who do not.

Additionally, we would like to comment further on specific portions of your report:

**Employees Used Illegal Tax Protester or Similar Designations in Isolated Instances in Case Narratives**

As you noted in your report, we have a fundamental disagreement with your interpretation of RRA '98 § 3707. Specifically, our interpretation of § 3707 is that it required the Service to eliminate any ITP designations and to treat these taxpayers exactly the same as all other taxpayers. Merely making references to taxpayers or their actions in the case history does not constitute a designation if those taxpayers continue to receive the same administrative remedies as all other taxpayers. This issue has been elevated to the Assistant Secretary for Management and Chief Financial Officer of the Treasury, but no response has yet been received.



## Fiscal Year 2004 Statutory Audit of Compliance With Legal Guidelines Prohibiting the Use of Illegal Tax Protester and Similar Designations

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In your review of the computer systems and case files used to document case activity, you identified 233 instances out of over 3.6 million cases reviewed where IRS employees referred to taxpayers as "tax protesters" or other similar designations in a case history. You also identified another 90 cases where you did not consider the history reference a violation but indicated you were concerned that these entries may create problems in the future. Since our employees use the case histories to document taxpayer actions and conduct, we do not believe these references are designations within the meaning of this section. No taxpayer rights have been violated.

### **Illegal Tax Protester Codes Were Not Used on the Master File but Were Identified on Other Computer Systems**

Your review of over 26 million taxpayer accounts on the Taxpayer Information File (TIF) and the Integrated Collection System (ICS) identified 73 cases where a case code that was previously used to identify a taxpayer as a tax protester was present. After reviewing these cases, we could not determine how the code was entered but did determine that none of these cases had any tax protester related activity. It appears that some type of action taken on these cases inadvertently caused the obsolete and inaccurate case code to appear.

After reviewing the case histories for each of these cases, we are confident that none of these cases represent situations where the Service was attempting to designate these taxpayers as protesters. We also confirmed that this code was not visible to employees on the ICS system and that the definition of this code was no longer contained in the reference material used by employees. We will be taking the appropriate action to eliminate these incorrect case codes from the 73 cases where it is present, and will take the necessary steps to block any future input of this code.

### **IRS has Taken Steps to Remove Illegal Tax Protester References from the Internal Revenue Manual**

The Office of Servicewide Policy, Directives and Electronic Research (SPDER) continues to monitor the IRM, along with the operating divisions/functions, to ensure references to ITP are not used.

The official IRM is contained in the Media and Publications core repository. All other versions of electronic IRMs originate from the Media and Publication files. The core repository is updated immediately as new IRMs are published. However, other electronic versions have varying production schedules, such as quarterly or semi-annually. For this reason, these sources, such as the IRS.gov (public website) and the Media and Publications CD ROM (CD ROM IRM) will be out of date until their next update cycle.

## Fiscal Year 2004 Statutory Audit of Compliance With Legal Guidelines Prohibiting the Use of Illegal Tax Protester and Similar Designations

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We have initiated actions to remove all ITP references identified by TIGTA from our IRMs and job aids. In addition, Criminal Investigation Headquarters issued a memorandum dated February 25, 2004, to all Special Agents in Charge outlining these findings and reminding them that such terms should not be used.

Our comments on your recommendations follow:

### **RECOMMENDATION 1:**

The Chief Information Officer should take the appropriate steps to remove the tax protester coding from the TIF and the ICS and strengthen controls to prevent these computer systems from accepting such coding.

### **CORRECTIVE ACTION:**

1A. Business Systems Development (BSD) will attempt to identify the business system owner of the command code "TDIRQ" and work with them to identify the requirements for the Request for Information Services (RIS) to determine how to validate the input screen of the command code. If a business owner cannot be identified, BSD will coordinate with impacted Modernization and Information Technology Services (MITS) organizations to identify criteria to prevent future use of "TXPR".

1B. New validation will be added to the command code "TDIRQ" to preclude any additional entries to "TXPR" in the "TDI-CASE-CD" field.

1C. BSD will program and execute a Utility that will remove the instances of the "TXPR" value that currently reside on the TIF.

### **IMPLEMENTATION DATE:**

1A. July 1, 2004 (Identify business system owner of "TDIRQ" or coordinate with impacted MITS organizations to identify criteria to prevent future use of "TDIRQ")

1B. October 1, 2004 (Add new validation to command code "TDIRQ")

1C. November 1, 2004 (Program/execute utility to remove instances of "TXPR" on TIF)

### **RESPONSIBLE OFFICIAL(S):**

Deputy Commissioner, Operations and Support OS  
Modernization and Information Technology Services OS:CIO  
Information Technology Services OSS:CIO:I  
Business Systems Development OS:CIO:I:B  
Compliance Systems Division OS:CIO:I:B:CS

## **Fiscal Year 2004 Statutory Audit of Compliance With Legal Guidelines Prohibiting the Use of Illegal Tax Protester and Similar Designations**

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### **CORRECTIVE ACTION MONITORING PLAN:**

A timeline will be prepared for all events associated with the identified actions to ensure completion by the ascribed dates.

### **RECOMMENDATION 2:**

The Commissioners, Small Business/Self-Employed (SB/SE) and Tax Exempt and Government Entities Divisions; the Chief, Agency-Wide Shared Services; and the Chief Counsel should take the necessary actions to ensure that the remaining ITP references are promptly removed from all versions of the IRM and IRS Job Aids.

### **CORRECTIVE ACTION:**

SB/SE, Tax Exempt and Government Entities Divisions, and the Chief, Agency-Wide Shared Services have taken actions to remove ITP references from all versions of the IRM and IRS Job Aids. Chief Counsel has revised their Chief Counsel Directives Manual (CCDM) to remove all ITP references, however, they are still in the clearance process for the revisions.

### **IMPLEMENTATION DATE:**

December 15, 2004

### **RESPONSIBLE OFFICIAL(S):**

Deputy Associate Chief Counsel, Procedure and Administration

### **CORRECTIVE ACTION MONITORING PLAN:**

The Deputy Associate Chief Counsel will track the status of the revision process in order to ensure the timely completion and posting of the CCDM revisions.

If you have any questions, please contact me at (202) 622-0600 or Robert L. Hunt, Acting Deputy Director, Compliance Policy, Small Business/Self-Employed Division, at (202) 283-2200.